

IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

C.R. No. 95 of 2005.

Date of decision: 26.12.2005.

Jai Singh & Anr.	... Petitioners
Versus	
Ram Nath	... Respondent

Coram :

The Hon'ble Mr. Justice V.M. Jain, Judge.

Whether approved for reporting?¹ Yes.

For the petitioners : Mr. G.R. Palsra, Advocate.

For the respondent: Mr. Virender Thakur vice Mr. Neel Kamal Sharma,
Advocate.

V.M. Jain, J. (Oral):

This revision petition under Section 115 of the Code of Civil Procedure has been filed by the defendants – petitioners against the order dated 1.7.2005 passed by the learned District Judge, vide which the appeal filed by the plaintiff was allowed, the order dated 5.10.2004 passed by the trial Court was set aside and the Civil Suit which was dismissed in default on 23.2.2000 was ordered to be restored to its original number.

The facts which are relevant for the decision of the present petition are that Ram Nath, plaintiff, had filed a suit for permanent prohibitory injunction against the defendants Jai Singh etc. The said suit was dismissed in default on 23.2.2000, since no one had put in

¹Whether reporters of Local Papers may be allowed to see the judgment?

appearance on behalf of the plaintiff on 23.2.2000, when the case was called for hearing. Thereafter, before the expiry of thirty days from the date of the dismissal of the suit in default, an application under Order 9 Rule 9 read with Section 151 C.P.C. was filed by the plaintiff, seeking restoration of the suit which was dismissed in default on 23.2.2000. The said application was contested by the defendants by filing reply. On the pleadings of the parties, the learned trial Court framed issues, including the issue as to whether there were sufficient grounds for restoration of the suit. Both sides led evidence. After hearing both sides, the learned trial Court dismissed the restoration application, vide order dated 5.10.2004. Aggrieved against the same, the plaintiff filed appeal before the District Judge. After hearing both sides, the learned District Judge, vide order dated 1.7.2005, allowed the appeal filed by the plaintiff subject to payment of Rs.500/- as costs and ordered the restoration of the suit, which was dismissed in default on 23.2.2000. Aggrieved against the same, the defendants filed the present revision petition in this Court.

Notice was ordered to be issued to the respondent.

After hearing the learned counsel and perusing the record, in my opinion, there is no merit in this revision petition and the same is liable to be dismissed. As refereed to above, the plaintiff had filed the suit for permanent prohibitory injunction against the defendants. The said suit was dismissed in default on 23.2.2000 on account of the non appearance of the plaintiff and his counsel. Before the expiry of thirty days from the date of the dismissal of the suit in default, an application under Order 9 Rule 9 read with Section 151 C.P.C. was filed in the trial Court, seeking restoration of the suit on the ground that the plaintiff was almost bed ridden and on account of his illness, he could not appear in the Court on

23.2.2000. It was further alleged that the counsel also could not appear in the case mistakenly on 23.2.2000 resulting in the dismissal of the suit. The said application was contested by the other side. As referred to above, the issues were also framed and the parties led evidence. In support of his case, the plaintiff himself appeared in the witness box as PW-1. The only mistake committed by the plaintiff while appearing in the witness box was that instead of giving the date of dismissal as 23.2.2000, the date of dismissal of the suit was recorded as 23.2.2002 in his statement. The learned trial Court, after magnifying the said mistake committed by the plaintiff, dismissed the restoration application observing that the plaintiff had failed to prove sufficient cause for his non-appearance in the Court on 23.2.2000 (since the reasons given by the plaintiff in his statement were in respect of 23.2.2002). However, when the matter came up for hearing before the learned District Judge in appeal, the learned District Judge taking practical view of the matter found that there was sufficient cause for ordering the restoration of the suit, which was dismissed in default on 23.2.2000. While doing so, the learned District Judge ignored the mistake committed by the plaintiff giving the date of dismissal as 23.2.2002 instead of 23.2.2000 and in my opinion, rightly so.

After perusing the order passed by the learned District Judge and after hearing the learned counsel for the parties, in my opinion, no fault could be found with the order dated 1.7.2005 passed by the learned District Judge while ordering the restoration of the suit, which was dismissed in default on 23.2.2000 subject to payment of Rs.500/- as conditional costs. In my opinion, no case whatsoever is made out for

interfering in the present revision petition filed by the defendants against the order of restoration passed by the learned District Judge.

For the reasons recorded above, in my opinion, finding no merit in this revision petition, the same is hereby dismissed.

Since further proceedings before the trial Court were stayed by this Court, the parties through their counsel are directed to appear before the learned trial Court on **20th January, 2006**, for further proceedings in accordance with law.

CMP No. 123 of 2005:

In view of the orders passed in the main petition, the stay order dated 5.8.2005, shall stand vacated and the application stands disposed of.

**December 26, 2005
(BSS)**

**(V.M. Jain),
Judge**